

CORTEZ HASBERRY,	)	
	)	
Plaintiff,	)	
	)	
VS.	)	No. 15-2025-JDT-cgc
	)	
JOSHUA CLINE, ET AL.,	)	
	)	
Defendants.	)	

On November 21, 2014, Plaintiff Cortez Hasberry, Tennessee Department of Correction prisoner number 456898, who is currently an inmate at the Morgan County Correctional Complex in Wartburg, Tennessee, filed a *pro se* complaint pursuant to 42 U.S.C. § 1983, in the U.S. District Court for the Middle District of Tennessee, accompanied by a motion seeking leave to proceed *in forma pauperis*. (ECF Nos. 1 & 2.) On January 12, 2015, U.S. District Judge Williams J. Haynes transferred the case to this district, where venue is proper. (ECF No. 7.) This Court granted leave to proceed *in forma pauperis* and assessed the civil filing fee pursuant to the Prison Litigation Reform Act, 28 U.S.C. § 1915(a)-(b). (ECF No. 11.) On September 9, 2015, the Court dismissed the complaint for failure to state a claim but granted leave to file a second amended complaint within thirty days. (ECF No. 17.) The order notified Plaintiff that, if he “fails to file an amended complaint within the

time specified, the Court will assess a strike pursuant to 28 U.S.C. § 1915(g) and enter judgment.” (*Id.* at 11.)

On September 23, 2015, Plaintiff filed a motion seeking an extension of time to file an amendment. (ECF No. 18.) The Court granted the motion, extending the time for filing a second amended complaint through November 7, 2015. (ECF No. 19.) However, Plaintiff has not filed an amended complaint, and the time within which to do so has expired. Therefore, judgment will be entered in accordance with the September 9, 2015, order of dismissal.

Pursuant to 28 U.S.C. § 1915(a)(3), the Court must also consider whether an appeal by Plaintiff in this case would be taken in good faith. The good faith standard is an objective one. *Coppedge v. United States*, 369 U.S. 438, 445 (1962). The test for whether an appeal is taken in good faith is whether the litigant seeks appellate review of any issue that is not frivolous. *Id.* It would be inconsistent for a district court to determine that a complaint should be dismissed prior to service on the Defendants, but has sufficient merit to support an appeal *in forma pauperis*. See *Williams v. Kullman*, 722 F.2d 1048, 1050 n.1 (2d Cir. 1983). The same considerations that lead the Court to dismiss this case for failure to state a claim also compel the conclusion that an appeal would not be taken in good faith.

Therefore, it is CERTIFIED, pursuant to 28 U.S.C. § 1915(a)(3) and Federal Rule of Appellate Procedure 24(a), that any appeal in this matter by Plaintiff would not be taken in good faith. Leave to proceed on appeal *in forma pauperis* is, therefore, DENIED. Accordingly, if Plaintiff files a notice of appeal, he must also pay the full \$505 appellate

filing fee or file a motion for leave to appeal *in forma pauperis* and supporting affidavit in the Sixth Circuit Court of Appeals.

For analysis under 28 U.S.C. § 1915(g) of future filings, if any, by Plaintiff, this is the first dismissal of one of his cases as frivolous or for failure to state a claim. This “strike” shall take effect when judgment is entered. *Coleman v. Tollefson*, 135 S. Ct. 1759, 1763-64 (2015).

The Clerk is directed to prepare a judgment.

IT IS SO ORDERED.

s/ **James D. Todd**  
JAMES D. TODD  
UNITED STATES DISTRICT JUDGE